STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY

DEPARTMENT OF HEALTH SERVICES
714/744 P STREET
SACRAMENTO, CA 95814

GEORGE DEUKMEJIAN, Governor

November 25, 1985

TO: All County Welfare Directors
County Administrative Officers

Letter No. 85-74

CHILD ABUSE REPORTING REQUIREMENTS

REFERENCE: Department of Social Services (DSS), All-County Letter (ACL) No. 85-39, dated April 1, 1985.

In response to the issuance of ACL No. 85-39, several counties have expressed concern with child abuse reporting responsibilities due to the belief that a conflict exists between the reporting requirements of the Penal Code 1/ and the confidentiality requirements of the Welfare and Institutions Code 2/ and Title 22, California Administrative Code 3/. Under the Child Abuse Reporting Law, county welfare workers are required to make reports of child abuse to the responsible public agency. On June 1, 1984, the Office of the Attorney General 4/ issued an opinion interpreting this law. This letter is to provide clarification of the interrelationship of these legal requirements.

Medi-Cal regulations provide that a child may apply for Medi-Cal, without parental contact in order to receive specified medical services. In practice, Medi-Cal Program policy has always been to refer suspected child abuse to Child Protection Services; however, OAG 83-911 interprets PC Section 11165 to mandate a referral in all instances when a child under age 14 receives medical attention for a sexually transmitted disease, pregnancy or abortion regardless of any evidence of abuse. Therefore, an employee of a county welfare department must make a report when in his or her professional capacity he or she observes or has knowledge of a child applying for minor consent services who he or she knows or reasonably suspects has been the victim of child abuse. However, such reports may not include any information from which an inference may be drawn that the child applied for, or received, Medi-Cal assistance.

1/ Penal Code (PC) Section 11165
2/ Welfare and Institutions Code (W&IC) Section 14010
3/ Title 22, California Administrative Code (CAC), Section 50147.1(a)
4/ OAG No. 83-911

It is evident that an application for minor consent services would, in many instances, give rise to an obligation on the part of a county welfare worker to report child abuse in accordance with the Child Abuse Reporting Law. The question, then, is whether there is a conflict with the no-parental contact requirements of Title 22, CAC, Section 50147.1(a) and (f).

The statue and regulation in question only prohibit the county welfare department from contacting the parents of a child applying for minor consent services. The Child Abuse Reporting Law, on the other hand, only requires the county welfare department to report child abuse to child protection agencies, law enforcement agencies, and agencies responsible for investigation of cases under Welfare and Institutions Code Section 300 (dependent children). These reports are confidential, and may not be disclosed except as permitted under Penal Code Section 11167.5.

Thus, the Child Abuse Reporting Law does not require the county welfare department to make a disclosure to parents in conflict with Title 22, CAC, Section 50147.1(a) and (f); any contact with parents would be made indirectly, by agencies or persons investigating cases of suspected child abuse. Moreover, such contacts should not give rise to any inference that the child applied for Medi-Cal. Thus, there is no conflict with the requirements of Title 22, CAC, Section 50147.1(a) and (f).

The courts have, on occasion, overridden the statutory confidentiality of information concerning applicants for and recipients of aid in the interests of justice, but have sought to maintain the privacy of the fact that a person applied for or received aid. Information from welfare files of abuse and neglect of a child would be neutral information concerning the physical condition of the child, and not information of the fact that the child was on or applying for aid.

In order to fulfill the purposes of the Child Abuse Reporting Law, county welfare workers should make reports as required by Penal Code Section 11166. However, such reports should not disclose the fact that the child has applied for Medi-Cal, nor should the reports include any facts which would suggest or give rise to any inference that the child applied for Medi-Cal. If necessary to prevent such inferences from arising, welfare workers may be required to include in their reports only the minimum, specifically-enumerated elements: name of person making

report, name of child, present location of the child, nature and extent of the injury, fact that led person making report to suspect child abuse (e.g., "child stated she is pregnant and under the age of 14 years"). (See Pen. Code, Section 11167(a).)

You should be aware that on September 13, 1985, the First District Court of Appeal, in the case of Planned Parenthood Affiliates of California, et al v. John Van De Kamp, et al, issued an order that stays the operation, implementation and enforcement of the Child Abuse Reporting Law on a statewide basis, insofar as it applies to the voluntary consensual sexual activities of adolescents under the age of 14 (emphasis added). With respect to such activities, employees of county welfare departments may not be prosecuted for failing to make child abuse reports while the temporary stay is in effect.

We hope this guidance will be helpful to you. If you have any questions, please contact Maxine Forster at (916) 324-4969.

Sincerely,

Original signed by

Doris Z. Soderberg, Chief
Medi-Cal Eligibility Branch

cc: Medi-Cal Liaisons
Medi-Cal Program Consultants

Expiration Date: One year from issuance.